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In re Application of MEHRABI :
Application No.: 10/520,771 :
PCT Application No.: PCT/AT00/00252 : DECISION ON RENEWED
Int. Filing Date: 21 September 2000 : PETITION UNDER
Priority Date Claimed: 24 September 1999 : 37 CFR 1.137(b)
Attorney Docket No.: TOMK0004 :
For: USE OF ALPROSTADIL (PROSTAGLANDIN :
E1) FOR PRODUCING A MEDICAMENT FOR :
ANGIONEogenesis :
ANGIONEogenesis :

Applicant's renewed "Petition For Revival Under 37 CFR 1.137(b)", filed in the United States Patent and Trademark Office on 13 July 2005 is GRANTED.

BACKGROUND

On 21 September 2000, applicant filed international application PCT/AT00/00252. The international application claims a priority date of 24 September 1999 and designates the United States. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 05 April 2001. The deadline to pay the basic national fee was thirty months from the priority date, that is 24 March 2002. The application became abandoned at midnight 24 March 2002 for failure to pay the basic national fee.

On 10 January 2005, applicant filed a petition for revival accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2), the petition fee of \$1500, and a declaration of the applicant.

On 13 July 2005 applicant filed the instant renewed submission under 37 CFR 1.137(b) accompanied by a supplemental declaration of the applicant.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995.

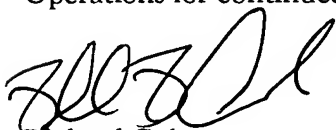
Applicant's petition filed on 10 January 2005 was dismissed because applicant's declaration stated that the failure to file a U.S. national application was "at all times on and after March 29, 2002, unintentional". The due date for the reply, however, was 24 March 2002. Applicant's statement in the declaration filed 10 January 2005 regarding the unintentional delay left a time period of five days unaccounted for and therefore did not address the entire delay from the due date for the reply until the filing of a grantable petition. Thus, the declaration did not satisfy the requirements of 37 CFR 1.137(b)(3) because the statement in the declaration did not indicate that the delay in the period from 24 March 2002 until 29 March 2002 was unintentional. Applicant's supplemental declaration filed on 13 July 2005 includes a statement that the failure to file a U.S. patent application was "at all times on and after March 24, 2002, unintentional". This supplemental declaration cures the deficiency of the prior declaration and, when considered in combination with the statement under 37 CFR 1.137(b)(3) as presented in the initial petition, satisfies the requirements of 37 CFR 1.137(b)(3).

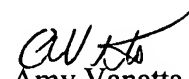
CONCLUSION

For the above reasons, the renewed petition filed on 13 July 2005 under 37 CFR 1.137(b) is GRANTED as to the National Stage in the United States of America.

Applicant has satisfied the requirements for acceptance under 35 U.S.C. 371. The application has an international filing date of 21 September 2000 under 35 U.S.C. 363 and a date of 10 January 2005 under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4).

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing.


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